

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

NEFTEL et al

Atty. Ref.: 2590-147

Appl. No. 10565810 (9705) TC/A.U. 3767

Filed: February 9, 2006

Examiner: Larry Ross Wilson

For: A SYSTEM FOR PERFORMING PERITONEAL DIALYSIS

\* \* \* \* \*

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

April 14, 2011

**REPLY BRIEF**

Appellant hereby respectfully replies to the new contentions raised on pages 38-39 of the Examiner's Answer. The other pages of the Answer restate the Final Office Action and Advisory Action positions, which Appellant addressed in the Appeal Brief filed on December 15, 2010.

**Responses to New Contentions**

1. In the first full paragraph on page 38 of the Answer, the Examiner contends that a person of ordinary skill in the art at the time of the invention would simply substitute the NefTel peristaltic pump in place of the two Kamen membrane pumps within the Kamen liquid distribution system in order to arrive the claimed invention. The Examiner contends that this type of substitution would not destroy

the functionality of the Kamen device. This is incorrect, and there appears to be no motivation or reason why a person of skill in the art would modify Kamen in such a manner. The claimed invention and its peristaltic pump require unidirectional ports. Indeed, the claimed invention requires that “all ports of the liquid distribution system that communicate with the [peristaltic] pump are unidirectional such that liquid only flows in one direction.” In contrast, Kamen’s device must use two membrane pumps that are contained within Kamen’s liquid distribution system and the ports must be bidirectional for the Kamen device to work. Thus, no one skilled in the art would have any incentive or reason to try to use a peristaltic pump or Neftel’s peristaltic pump within the Kamen device in order to arrive at the specifically claimed invention.

2. In the second full paragraph on page 38 of the Answer, the Examiner contends that Kamen’s pump is “separated” from the Kamen liquid distribution system and that the combination of Kamen in view of Neftel “shows a partial peristaltic pump could be substituted for the membrane pumps of Kamen.” The Examiner goes on to note that a peristaltic pump replacing the membrane pumps of Kamen would require a wall or race to squeeze the tubing against, which would also separate the pump from the liquid distribution system. Respectfully stated, these contentions and logic are incorrect. Kamen’s device contains the two membrane pumps within the liquid distribution system and utilizes bidirectional

ports; otherwise, the Kamen device would not work. In addition, the Neftel peristaltic pump could not be simply inserted into Kamen without destroying the functionality and objectives of Kamen. See, e.g., the discussion above. Finally, there is no motivation or reason why a person would modify Kamen in the manner suggested by the Examiner, i.e., separate the Kamen membrane pumps from the Kamen liquid distribution system and then insert the Neftel peristaltic pump in place of the two Kamen membrane pumps. There is simply no motivation whatsoever to completely re-design Kamen in this fashion.

3. In the paragraph bridging pages 38 and 39 of the Answer, the Examiner contends that the Appellant's "unidirectional" claim language does not recite structure that limits the function of the ports to only one direction, and the Examiner contends that the ports of the Kamen device function such that the liquid flows in one direction. These contentions are incorrect and run counter to normal understandings of the wording and technology in this area. In this regard, the claim wording concerning the unidirectional ports and the other claim wording recite structure and functions that cannot be ignored, that are accepted claim wording in the US, and that concern features which are completely different from anything disclosed or suggested in Kamen. As one skilled in the art can understand by reading Appellant's specification and claims and by reading the Kamen reference, Appellant's ports must be "unidirectional," and the Kamen ports

must be “bidirectional.” Thus, Kamen not only fails to disclose or suggest the claimed invention, but also Kamen teaches away from the claimed invention.

4. In the first full paragraph on page 39 of the Examiner’s Answer, the Examiner is focusing on Appellant’s independent Claim 53, and Appellant’s position that Claim 53 is not obvious over Kamen in view of McFarland. As noted in the Appeal Brief, Kamen fails to teach or suggest “a clipping mechanism adapted to be reversibly attached to a moving actuator in such a way that the membrane movement can be controlled in a push and a pull operation mode.” McFarland does not overcome this deficiency, and there is no reasonably apparent way to use any alleged clipping mechanism in McFarland with the Kamen device and arrive at the claimed invention. In the Answer, the Examiner simply states that the obviousness analysis is allegedly confirmed with “what the combined teachings of the references would have suggested to those of ordinary skill in the art.” To the contrary, there is no motivation or reasonably apparent way to combine the two references and arrive at the specifically claimed invention, nor has the Examiner provided any such motivation or reasonably apparent combination of the two references that would arrive at the invention, nor has the Examiner provided any reason why someone would modify Kamen with McFarland’s feature.

In conclusion, Appellant respectfully requests the Board to reverse the final rejections and pass the subject application to issue.

Serial No. 10565810

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: /Duane M. Byers/

Duane M. Byers

Reg. No. 33,363

DMB:lmo  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
703-816-4009